IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6935 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAH PRAKASHKUMAR PADAMSHIBHAI - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR BJ JADEJA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6

GOVERNMENT PLEADER for Respondent(s) : 1,

MS KJ BRAHMBHATT for Respondent(s) : 2 - 4.

RULE SERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat dtd.4/1/1988 in dismissing the same and confirming the order passed by the Collector, Surendranagar dtd.21/8/1986 as well as the order passed by the Deputy Collector, Dhrangadhra dtd.26/8/1985 holding that the transaction / transfer in favour of the petitioner by the original land owner, is also in breach of Sec.54 of the Saurashtra Gharkhed Ordinance an further directing to remove the petitioner from the land bearing Survey Nos.83, 208 Paiki and 235 summarily.

2.The land bearing Survey No.983 area admeasuring 7 Acres and 33 Gunthas of Dasada was owned by one Vepari Ukad Jumma and the petitioner purchased the same by registered sale deed dtd.5/10/1969 and therefore, it is the case of the petitioner that his name was mutated in the record of rights vide Mutation Entry No.1474 dtd.18/5/1974. It is also the case of the petitioner that subsequently the petitioner has also purchased the land bearing Survey No.298 admeasuring 11 Acres and 35 Gunthas of land from one Alu Amiji of Dasada in 1970 and Mutation Entry No.1725 was also mutated in the revenue record to that effect. It also appears from the record that the petitioner purchased another land bearing Survey No.235 admeasuirng 3 Acres and 20 Gunthas from one Manabibi and Kamrunishabibi in 1976 and Mutation Entry No.1794 was also mutated in the revenue record to that effect. The proceedings came to be initiated by issuing notice dtd.22/7/1985 by

registering Gharkhed Ordinance Case No.62 of 1984 against the petitioner and the original land owner of Survey No.983 i.e. Vepari Ukad Jumma for the breach of the provisions contained in Sec.54 of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 (hereinafter referred to as the "the Ordinance" for convenience"), and the Deputy Collector, Dhrangadhra held that the transaction in favour of the petitioner and the original land owner Vepari Ukad Jumma was in breach of provision of Sec.54 of the Ordinance and therefore, declared not only the said transaction as invalid, but also declared the said transaction with regard to the land bearing Survey Nos.298, 235 as invalid and directed that the petitioner be removed summarily from the aforesaid three lands. Being aggrieved and dissatisfied with the order passed by the Dy.Collector, Dhrangadhra, dtd.26/8/1985, the petitioner preferred an

appeal before the Collector, Surendranagar being Gharkhed Ordinance Case NO.2 of 1985 and the Collector, Surendranagar also dismissed the said appeal with revision application, confirming the order passed by the Dy.Collector, Dhrangadhra dtd.26/8/1985. Against the said order passed by the Collector, Surendranagar dtd.31/7/1986 passed in Gharkhed Ordinance Case No.2 of 1985, the petitioner preferred a revision application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.318 of 1986 and the Dy.Secretary, Revenue Department (Appeals), State of Gujarat by his judgment and order dtd.21/8/1986 dismissed the revision application confirming the order passed by both the authorities below. Being aggrieved by the said judgment and order passed by the Dy.Secretary, Revenue Dept. (Appeals), State of Gujarat dtd.4/1/1988 in dismissing the same and confirming the order passed by the

Dy.Collector, Surendrangar, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

3.Mr.Jadeja, learned advocate appearing on behalf of the petitioner has vehemently submitted that the transaction has taken place in the year 1969 and even the entry in favour of the petitioner was also mutated in the revenue record in the year 1974 and the proceedings came to be initiated by the Dy.Collector, Dhrangadhra in the year 1985 i.e. after a lapse of 11 years of even certification of the entry and therefore, exercise of the powers by the Deputy Collector, Dhrangadhra was after unreasonable period which was not permissible. He has also further submitted that even the order passed by the Dy.Collector is in breach of principles of natural justice. It is also further submitted by him that in fact, the petitioner was already agriculturist prior to

the purchase of the land bearing Survey No.983 and therefore, the transaction and/or purchase by the petitioner was not in breach of sec.54 of the Ordinance. It is also further submitted by him that so far as cancellation and/or declaring the transfer / transaction with regard to the land bearing Survey Nos.298 and 235 is concerned, even no show cause notice was issued by the Dy.Collector, Dhrangadhra and the show cause notice was issued only with regard to the land bearing Survey No.938 and therefore, in absence of any show cause notice, the Dy.Collector, Dhrangadhra could not have set aside the sale with regard to the aforesaid two lands and therefore, it is requested to allow the present petition.

4.Ms.K.J. Brahmbhatt, learned advocate appearing on behalf of the respondent Nos.2 to 5, heirs of original land owner Vehari Ukad Jumma has tried to support the judgement and order passed

by the Secretary (Appeals), order passed by the Collector, Surendranagar as well as the order passed by the Collector, Dhrangadhra. It is submitted by her that as it is found that the transaction and the sale in favour of the petitioner was in breach of sec.54 of the Ordinance and the transaction was nullity and therefore, there is no question of any limitation and/or exercise of powers by Dy.Collector within a reasonable period and as the action was nullity, the proceedings can be initiated at any time and therefore, it is requested to dismiss the present petition.

5.Mr.Bhate leaned AGP has adopted the arguments canvassed on behalf of the respondent No.2 to 5 and has submitted that all the authorities below have rightly held that the transaction in favour of the petitioner was hit by the provisions of Sec.54 of the Ordinance and therefore, the authorities have rightly

directed to evict summarily from the land in question and therefore, it is requested to dismiss the present petition.

6.Having heard the learned advocates appearing on behalf of the respective parties and perusing the material on record, it is not in dispute that the land in question i.e. land bearing Survey No.983 came to be purchased by the petitioner as back as on 5/10/1969 from one Vepari Ukad Jumma and Mutation Entry No.1474 to that effect is also came to be mutated in favour of the petitioner on 18/5/1974. It is also not in dispute that the notice came to be issued by the Dy.Collector, Dhrangadhra for the first time in the year 1985 i.e. after a period of 11 years of the entry and 16 years of sale transaction. Mr.Jadeja learned advocate appearing on behalf of the petitioner has relied upon the judgement of the Division Bench of this Court in the case of Valjibhai

Jagjivan Vs. State of Gujarat, reported in 2005 (2) GLH 34 in support of his submission that even in the case where the transaction was void and/or nullity, the powers are to be exercised by the authorities within a reasonable period and if the proceedings are not initiated within a reasonable period and/or the powers are exercised after unreasonable period, the same is illegal and cannot be permitted to stand.

7.I have gone through the judgement of the Hon'ble Division Bench of this Court in the case of Valjibhai Jagjivan (Supra) and in view of the law laid down by the Division Bench of this Court in the said judgement which was relying on the judgement of the Hon'ble Supreme Court, the exercise of the powers by the Dy.Collector, Dhrangadhra after a period of 11 years of entry and 16 years of transaction cannot be permitted to be continued and it is also required to be held that the exercise of

the powers by the Dy.Collector, Dhrangadhra was after unreasonable period which was not permissible.

8.In view of the above though there is substance in the petition on merits with regard to quashing and setting aside the transaction with regard to the land bearing Survey No.298 and 235 to the effect that the same for quashing and setting aside the sale transaction, even there was no show cause notice. However, considering the fact that the petition succeeds on the ground that the Dy.Collector, Dhrangadhra has exercised the powers after unreasonable period which is not permissible, the petition is required to be allowed on that ground, this Court is not going into the merits of the case.

9.For the reasons as aforesaid, the petition succeeds. The judgement and order passed by the

Deputy Secretary, Revenue Department (Appeals), State of Gujarat dtd.4/1/1988 in Revision Application (S.R.D.) No.318 OF 1986, the order passed by the Collector, Surendranagar dtd.31/7/1986 in Gharkhed Ordinance Case No.2 of 1985 and order passed by the Deputy Collector, Dhrangadhra dtd.26/8/1985 in Gharkhed Ordinance Case No.62 of 1984-85, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH, J.)

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